

City of Detroit

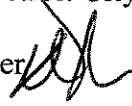
CITY COUNCIL

DAVID D. WHITAKER
Director
(313) 224-4946

DIVISION OF RESEARCH & ANALYSIS
Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 216
Detroit, Michigan 48226
(313) 224-4946
FAX: (313) 224-0368

PEGGY ROBINSON
Deputy Director
(313) 224-4946

TO: The Honorable Detroit City Council

FROM: David D. Whitaker 

DATE: July 10, 2009

RE: MAYOR BING'S JULY 7, 2009 COMMUNICATION ENTITLED "VETO STATEMENT REGARDING THE RESOLUTION CALLING FOR AN EMERGENCY INJUNCTION AGAINST GREATER DETROIT RESOURCE RECOVERY AUTHORITY (GDRRA)"

Pursuant to a request by City Council President Pro Tem JoAnn Watson, the Research and Analysis Division (RAD) provides the following information relative to the effect of Mayor Bing's communication entitled "Veto Statement Regarding the Resolution Calling for an Emergency Injunction Against Greater Detroit Resource Recovery Authority (GDRRA)", dated July 7, 2009.¹ The Mayor's veto statement relates to City Council's resolution adopted on June 20, 2009. However, Council's resolution is **expressly exempt** from the general rule of Detroit City Charter section 4-119, and thus **not subject to mayoral veto**.

Mayoral vetoes are addressed in the 1997 Charter of the City of Detroit at section 4-119, which reads, in pertinent part, as follows:

Every ordinance or resolution of the city council, except quasi-judicial acts of the city council including any under section 9-302, appointments

¹ Although this memorandum does not address the content of the Mayor's veto statement, RAD notes that the statement contains significant inaccuracies. With respect to the Mayor's assertion that the GDRRA facility produces steam that provides power for 198 schools, according to the president of Detroit Thermal, only four schools are on the downtown steam loop served by Detroit Thermal. Detroit Thermal's president further indicated that (at least as of July 1, 2009), it is providing steam without the incinerator as its contract with Covanta expired on July 1, 2009. GDRRA's own June 18, 2009 "Resolution Consenting to Acquisition by Covanta Projects, Inc. of Undivided Interest in Detroit Resource Recovery Facility on Certain Conditions" indicates that the Detroit steam loop (owned by Detroit Thermal) serves over 120 public and private buildings in the area of downtown and midtown -- not the 198 schools indicated by the Mayor's statement.

by the city council or **action taken under section 2-107(2-3), 4-102, 4-105, 4-108, 4-109, 4-120, 4-121, 7-1006, or 12-110 of this Charter**, shall be presented by the city clerk to the mayor within four (4) business days after adjournment of the meeting at which the ordinance or resolution is adopted.

The mayor, within seven (7) days of receipt of an ordinance or resolution, shall return it to the city clerk with or without approval, or with a veto and a written statement explaining the veto (emphasis added).

City Council's resolution, adopted by a six to two vote on June 30, 2009, "resolves, pursuant to City Charter Sections 4-121 and 4-122, to obtain an opinion and advice of a suitable outside attorney . . . to represent the City Council in legal proceedings seeking a temporary restraining order, preliminary and permanent injunction, and declaratory judgment, against delivery of Detroit solid waste to the Greater Detroit Resource Recovery Authority for incineration after June 30, 2009 The action taken by Council, as set forth in the "resolved" clause, indicates the Body's intent to retain outside counsel to perform a task (*i.e.*, provide advice and an opinion and potentially, to pursue litigation on behalf of the Council).

City Council's action is consistent with its authority as explicitly granted by Charter section 4-121, which states that

[t]he city council may obtain the opinion or advice of an outside attorney in any matter pending before it. Where there exists a conflict of interest between the city council and another branch of government, the city council has the authority to retain an attorney licensed to practice law in Michigan who shall represent the city council in legal proceedings.

Council's resolution to obtain the services of an outside attorney falls squarely within its unique authority as granted exclusively to the Council by section 4-121. A clear conflict exists between City Council and the Administration with respect to its plans for management and disposal of Detroit's solid waste after June 30, 2009. Council has unsuccessfully sought specific information from GDRRA² and the Administration regarding its plans for over a year, and has been stymied in its investigative efforts as authorized by Charter section 4-109.³

Council action taken by resolution under section 4-121 of the City Charter is expressly excluded from the requirement under section 4-119 that the City Clerk present the resolution to the Mayor. Any other result would be a violation of the Charter's scheme of separation of powers. In sum, not only was the City Clerk not required by the Charter to present Council's resolution to the Mayor, the Mayor lacks authority to veto the resolution.

² The GDRRA Board is appointed by the Mayor.

³ Section 4-109 provides: "The city council may make any investigations into the affairs of the city and the conduct of any city agency." Section 4-119 also exempts investigative action taken under section 4-109 from the province of mayoral veto.

As a matter of public policy, to contend that the Charter intends to allow the Mayor to veto a Council resolution that derives from a conflict between the two branches of City government is inherently unreasonable.